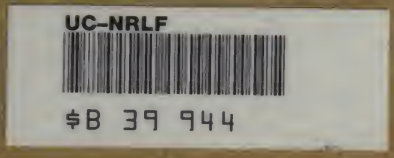

THE SHERMAN LAW

Where It Has Failed
Why It Has Failed
and a
Constructive Suggestion

An address before the Economic Club of Philadelphia, Pa., May 22, 1915

By

TO THE READER:

SIR:—Here is a sequel to the two articles by Mr. George W. Perkins,—"The Outlook for Prosperity" and "The New South and the New World,"—which have attracted wide attention among the business men of the United States. The present article contains Mr. Perkins' concrete proposal with regard to possibly the most important business issue of the day,—that of anti-trust legislation.

Will you be good enough to read this article carefully and write us your opinion about it? In case you desire what you write to be considered confidential, we shall so treat it; otherwise we shall feel free to use it for publication.

THE EDITORS,
The Market World,
80 Wall Street, New York City.

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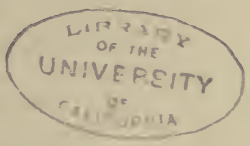

An address before the Economic Club
of Philadelphia, Pa., May 22, 1915

By

GEORGE W. PERKINS

Reprinted from
The Market World
New York

FOREWORD.

Early in February of this year Mr. George W. Perkins delivered an address before The Economic Club of New York on "The Outlook for Prosperity." This address was published in "The Market World," and attracted so much attention that it was later republished in pamphlet form and distributed throughout the country with a request that readers of the pamphlet send us their comments upon Mr. Perkins' diagnosis of the American business situation.

On March 22 we made the following comment editorially upon the results obtained through the distribution of this pamphlet:

"We have simply been amazed at the number and the character of the responses we have received. They have come in by the hundreds, from business men and students of business living in every State of the Union and engaged in the most various pursuits. Bankers, lawyers, doctors, clergymen, heads of great railroad and industrial corporations, merchants, manufacturers, college professors, farmers,—all these and more have sent us their expressions of opinion, in a great number of cases evidently prepared with extreme care and at great length.

We went on to say that we should issue a supplement containing the best of these letters. After a careful survey of the material, however, it presently appeared that a supplement which should convey even a fair summary of the letters received would be too voluminous to be undertaken. There was, moreover, a further fact to be taken into account. A considerable number of our correspondents, while concurring in the views expressed by Mr. Perkins, were anxious to have a more specific statement of remedies for the existing situation. Happily, Mr. Perkins has been willing to meet this suggestion, and the present clear and concrete discussion of the application of the Sherman Act, possibly the most pressing of present day business issues, is the result. We commend it to the attention of all persons, irrespective of party, who are willing to think the problem through.

THE EDITORS,
The Market World,
80 Wall Street, New York City.

THE SHERMAN LAW

WHERE IT HAS FAILED: WHY IT HAS FAILED: AND A CONSTRUCTIVE SUGGESTION

By George W. Perkins

DOUBTLESS we will all agree that at the time the Sherman Law was passed there was crying need for legislation against the evils that were rapidly developing in the American business world, and that there was ground for the apprehension of the people regarding the far-reaching harmful effects of those evil tendencies.

Business men were acquiring power to an extent that had previously been unknown, and in many instances they were using that power for their own personal profit and aggrandizement and to the detriment and injury of their fellowmen. They were practicing secretive business methods, beating down competitors, and forcing them to choose between bankruptcy or entering a combination on terms which were very unfair. This was clearly the tendency of the times, and legislation to check and prevent it was imperative.

A Bad Means to a Good End.

With this most desirable end in view, the Sherman Law was passed in 1890. The object of the legislators was commendable; the results attained have been lamentable, for no intelligent, thoughtful man can look back over the intervening twenty-five years and conscientiously say that the law that was passed was the kind of a law that should have been enacted to achieve the reforms so greatly needed.

During these twenty-five years men have continued to

acquire power to an extent little dreamed of when the Sherman Law was passed, and have continued to use it for their own selfish purposes and to the detriment of the public welfare. Evil practices in business have been persistently followed that have been most damaging in their effects on the public welfare and most beneficial in their pecuniary reward to a few individuals. All this has been taking place with the Sherman Law on the books.

That the Sherman Law has been a failure from the beginning is proved by the events that have occurred since its passage. In the first place, for a number of years it was practically a dead letter. During this time the organization of corporations through consolidations and mergers went on at a rapid rate, and evil practices and oppressive methods cropped out on every hand, until the country rose up in mass against them. This situation reached a climax in the Roosevelt Administration, when suits were brought against some of our largest industrial organizations. At the same time the Department of Commerce and Labor was established and given power to investigate our large industrial concerns. President Roosevelt used this department for such investigations and declared his belief that there were good and bad trusts. He said that he proposed to bring suits against what he called "bad trusts," but not against what he termed "good trusts." The Department of Commerce and Labor pursued its investigations and made various reports. In many addresses and messages Mr. Roosevelt declared his belief that large industrial corporations had come to stay, but that their affairs must be so administered that they would be a benefit and not a menace to our people.

What the Republican Party Promised.

This condition existed in 1908, when Mr. Taft was nominated for the Presidency. The platform on which he was

nominated contained Mr. Roosevelt's views on the trust question, which were expressed in the following plank of the Taft platform:

> **"Trusts.** The Republican Party passed the Sher-
> "man Anti-Trust Law over Democratic opposition and
> "enforced it after Democratic dereliction. It has been
> "a wholesome instrument for good in the hands of a
> "wise and fearless administration. But experience has
> "shown that its effectiveness can be strengthened and
> "its real objects better attained by such amendments as
> "will give to the Federal Government greater supervi-
> "sion and control over and secure greater publicity in
> "the management of that class of corporations engaged
> "in interstate commerce having power and opportunity
> "to effect monopolies."

A few weeks later Mr. Bryan was nominated on the Democratic platform, the trust plank of which, among other things, declared for a policy that would prohibit the control by a "manufacturing or trading corporation, engaged in interstate commerce," "of more than fifty per cent of the total amount of any product consumed in the United States."

The Presidential compaign of 1908 followed, and the widely differing views of the Republican and Democratic Parties on the trust question, as represented by these two planks, were vigorously debated throughout the country. Probably the greatest and most effective speech of that entire campaign was Governor Hughes' speech at Youngstown, Ohio, wherein he utterly demolished Bryan's 50 per cent theory and pointed out the absolute chaos that would follow in business if any such standards of right and wrong, or efficiency, were set up.

How the Promise Was Broken.

The planks went to the voters of the country and the Republican plank was adopted by an overwhelming vote. The

Taft Administration entered office; but in place of making any determined, persistent effort to have its plank enacted into law it allowed matters to drift until decisions in the Standard Oil and Tobacco cases were handed down by the Supreme Court. Then Mr. Taft and his associates deliberately and completely abandoned the trust plank of their platform by immediately proclaiming that "dissolution is the solution of the trust question." In other words, the Taft Administration deliberately repudiated the plank of its own platform, which had been so overwhelmingly endorsed by the people, and adopted the plank of the Bryan platform, which had been rejected by the people; and with eagerness and enthusiasm the Taft Administration proceeded to dissolve the Standard Oil and Tobacco Companies into a large number of small units, telling the people what great benefits would follow therefrom. Every man in this country knows what did follow, viz., largely increased profits to inside stockholders and largely increased prices of commodities to outside consumers.

In spite of this farcical result the Taft Administration brought many other dissolution suits, notably against the Steel Corporation and the Harvester Company. Business conditions became more and more demoralized and business men became more and more uncertain as to what they could or could not do. Gradually capital became timid and retiring, and for four years we have seen a period of semi-stagnation in business development in this country. Gentlemen, this is directly traceable to the Taft Administration and wholly chargeable to its utter failure to keep the pledge it made to the people in the trust plank of its 1908 platform. Had it kept its own pledge, instead of keeping the pledge of the Bryan platform, the business atmosphere would have been cleared of all doubt and business would have known along just what lines it could proceed. In addition, the people would have been protected from the evils from which

they were and still are suffering, by a law that would have given "to the Federal Government greater supervision and control over and secured greater publicity in the management of that class of corporations engaged in interstate commerce having power and opportunity to effect monopolies."

The Democratic Attempt.

The Wilson Administration then came into power. It evidently felt, as the Republicans did in 1908, that the Sherman Law was not satisfactory and that it must tackle the trust question, and so it passed the Clayton Bill, which should more properly be called the muddle bill, as in my judgment it will simply add to the present confusion. It also passed the Federal Trade Commission Law, which is a very poor law with a very good name. The idea of establishing a Federal Trade Commission is excellent but under this law the Commission will find itself powerless to do the things that are necessary. However commendable may be the intentions of the gentlemen on the Commission, between the Sherman Law and the Clayton Bill they will find themselves "'twixt the devil and the deep sea." Again it seems to me that our lawmakers have failed to accurately diagnose the situation. They, as Democrats, seemed to realize in 1914, as did the Republicans in their platform of 1908, that something was wrong or lacking in the Sherman Law; but, either through ignorance or lack of courage or for a poorer reason, our Democratic friends have failed to meet the issue squarely and settle it intelligently and in keeping with modern economic and moral requirements.

In the meantime, while the Clayton Bill was being debated in Congress and enacted into law, we had two trust case decisions by two Courts of equal rank and only exceeded in power by the Supreme Court itself. I refer to the Harvester decision and the Keystone Watch Case decision.

The Bewildering Course of the Courts.

In the Government suit to dissolve the International Harvester Company the United States District Court for the District of Minnesota a short time ago, by a divided vote, handed down a decision dissolving that company on the ground that it had acquired too large a percentage of the business in which it was engaged; yet all the judges who joined in the decision gave the company a clean bill of health as to its conduct and even went so far as to criticize the Government for charging that the company had improperly conducted its business.

Its exact language on this point is as follows:

> "It is but just, however, to say and to make it plain "that in the main the business conduct of the company "towards its competitors and the public has been hon- "orable, clean and fair. And in this connection it "should also be said that specific charges of miscon- "duct were made in the Government's petition which "found no warrant whatever in the proof. These were "of such a character and there was so much of them, "apparently without foundation, that the case is excep- "tional in that particular."

Again, only a few weeks ago, the United States District Court for the Eastern District of Pennsylvania,—a court of precisely the same standing and power as the court that decided against the Harvester Company,—handed down a unanimous decision refusing to dissolve the Keystone Watch Case Company because it had acquired a large percentage of the business in which it was engaged; yet all the judges agreed that the Watch Case Company had been guilty of a few improper practices, but that these could and should be reached by governmental injunction and *not* by governmental dissolution.

Here we have two Courts of precisely the same power and jurisdiction handing down decisions under the Sherman

Law that are exactly opposite in character. Since these decisions both cases have been carried to the Supreme Court. When the Harvester case was before the Circuit Court it was argued by a Republican Attorney General, who laid great stress on the fact that the company had been guilty of all sorts of improper, immoral practices. As I have shown, the Government was practically thrown out of court on all these charges. The present Democratic Attorney General, in arguing the case before the Supreme Court, admitted that the Harvester Company had been honorably managed and conducted, but set up the contention that the company is illegal under the Sherman Law because of the manner in which it was organized, and the resultant large percentage of business it has; that if it had grown naturally from a single small company to its present pre-eminence it would have been legal, but that, as it was formed through the consolidation of several companies doing similar lines of business, it was illegal.

The following astonishing situation has developed in the suit, viz., the judges of the Circuit Court said that during the first two or three years of the existence of the Harvester Company there were certain improper practices, but that these were inherited from the small companies and eradicated by the large company as soon as possible. Yet this same Court, by a divided vote, decreed that the Harvester Company should be dissolved. The present Democratic Attorney General asks the Supreme Court to do the same thing; therefore, both the Circuit Court and the Attorney General are, in effect, asking that the Harvester business be returned to the conditions under which it was conducted by the small companies, which companies the Court itself says were guilty of immoral practices. Do the Circuit Court and the Democratic Attorney General mean to take the position that a number of small competing companies doing an immoral business would be complying with the Sherman

Law, while a large co-operative company, doing an admittedly moral business, would be violating the Sherman Law? Such a position would put our legal friends on record as believing that the interest and welfare of our people are more dependent upon a vindication of legal technicalities than upon moral actualities and economic necessities.

What Is Certain About the Sherman Law.

The only certainty about the Sherman Law seems to be the absolute uncertainty that surrounds its interpretation; but if the law means what the Taft and Wilson Administrations tell us it means, then it stands for a strict maintenance of old-fashioned, ruthless, competitive methods in business, with all their well known abuses and evils, and squarely against modern co-operative methods. If this be true, then the law is out of tune with the times in which we live, is morally and economically unsound, and cannot endure.

The Disease Wrongly Diagnosed.

I believe I am correct in saying that we have at last reached a point where the Sherman Law, as it stands, is not satisfactory to the business world whose improper activities it was supposed to curb, nor to the great mass of the people in whose interest and for whose protection it was enacted. The question arises as to why this is so, and I believe the answer is found in the fact that the men who drew the law failed to diagnose the disease correctly and therefore prescribed the wrong medicine. They saw the results of the disease, but they failed to understand the cause of the disease. They saw individuals and small groups of men suddenly acquiring vast and unheard-of power in the business world, and they knew that such vast power had never before been acquired. They knew that these men were using their power for personal gain and public detriment. They seemed to think that there had been suddenly created a different type of man than had ever lived be-

fore,—a sort of superman endowed with qualities that made it possible for him to do these extraordinary things in business that were so profitable to him and so detrimental to his fellowmen. They saw him building up vast business machines that reached out in every direction. They saw him, through these machines, oppressing his competitor, maltreating his labor, imposing on his consumers, and they sought to strike at it all by passing a law that they thought would make it impossible for him to create these large machines.

Steam and Electricity Change the Fundamentals of Business.

Now, as I have said, these men failed utterly to understand the cause of the new disease, for the cause did not lie in the fact that a superman had suddenly been created, a man with greater ability than any man had ever had before; the cause lay in the fact that our ordinary, every-day business man, the same type that existed twenty-five or fifty years before, had suddenly been given by our inventors devices and machinery with which to do business that, in themselves, centralized business activities and made vast business concerns and undertakings possible for the first time since the world began. Steam and electricity in their many forms are what have made the corporation,—what have made centralization in industry possible and inevitable. The Sherman Law has been utterly unable to prevent this evolution; and centralization and consolidation have forged ahead in all forms of business life in spite of the Sherman Law, because that law did not and could not strike at the causes that were bringing about this wonderful transformation in business methods and opportunities.

If the men who passed the Sherman Law had properly diagnosed the situation and had realized the great new causes that were at that time manifesting themselves in the

business world, they would have known that the Sherman Law, as passed, could not possibly accomplish the results desired, for the following reasons:

First: Because with steam and electricity it was inevitable that we should have large business units;

Second: Because with large business units, men, still being human and selfish, would abuse the power that large business units gave them;

Third: Because the only way to protect the people from the evils that were developing was to permit the organization of large business units, since they were inevitable, but to supervise and regulate the acts and conduct of the men who manage them through some power broader and stronger than the units themselves, doing this in such a way as to preserve for the people the advantages to be had from doing business on a large scale and at the same time to protect the people from the evils arising from large power in the hands of unscrupulous men.

A Constructive Suggestion.

Had a correct diagnosis been made, the framers of the Sherman Law would have drafted a very different law, and in my judgment it would then have been and to-day should be along the following general lines:

First: The establishment by the Federal Government of a competent business court, board or commission, with power to create interstate and international industrial corporations;

Second: Requiring that any group of men desiring to organize a business concern, intending to do business in our various States and in foreign countries, go to this court in Washington and obtain a charter;

Third: Requiring that before the granting of any such charter the business court or commission should be convinced that the proposed business undertaking was to be

conducted in the public interest and that it was not to restrain trade or acquire private monopoly;

Fourth: Requiring full publicity as to the operations of the company, for the information of the business court that, as the company proceeded with its business, the court might be sure that it was not improperly restraining trade or acquiring monopoly; and for the protection of the public, whose money and labor were to be employed and whose consumers were to be served;

Fifth: Requiring that capitalization be honest and legitimate and represent a proper value for every dollar issued in securities;

Sixth: Requiring that violation of the law or the rules and regulations of the court be punishable with imprisonment of individuals, exactly as is the case with National banks, whose officers, when guilty of wrong-doing, are punished without disturbing the activities of the bank. There should be no more thought of dissolving a large properly conducted interstate and international business, in which many thousands of people are interested as stockholders, employes and customers, than of dissolving a great National bank because an officer has done something wrong. Such a step should be the very last one resorted to. Bad practices should be reached and eradicated either by indicting individuals or by injunction.

Evils Remedied by Such a Law.

Had such a law as this been passed, with stringent regulations against private monopoly and with power given to such a court to see to it that large corporations did not use their power to restrain trade but did use it to develop trade, business would have prospered far more and the people would have been protected far more.

For example: Undoubtedly one of the greatest evils from which the people of this country have suffered since

the Sherman Law was passed has been the stock watering and stock jobbing operations that have been carried on in the organizing and financing of corporations. The Sherman Law never has protected and the Clayton Bill does not now protect the people against this great evil.

The people have also suffered from secretive, blind-pool methods, made possible through a lack of proper and *bona fide* publicity as to how corporations were conducting their business. A few insiders have had inside information, but the stockholders, the employes and the public have had little or no information, or else very often incorrect or misleading information. Nothing in the Sherman Law has in any way protected the public from all these serious and costly evils.

Constructive, Not Destructive, Action Required.

There is a vast difference between restraint of trade and expansion of trade, and this difference varies according to the nature of the business. It is utterly impossible to define it in any one law so that it will cover all forms of business. We can never properly handle this important question except through a permanent court or commission that will have broad powers and discretion in the matter. As it stands to-day, no business man, no lawyer, no judge, no court has been able to define it; and if the Supreme Court in the important industrial cases now coming before it is able to define it in those particular cases, the rulings will not necessarily apply to other concerns doing business under different conditions and in entirely different lines of trade.

Furthermore, it is of the utmost importance in this matter of restraint of trade that a company should know what it can do and what it cannot do, before it starts in business. It should not be required to start in business and then go through the various courts up to the Supreme

Court, and spend from two to ten years and large sums of money in order to find out whether it is a legal or an illegal concern.

The Rule of Reasonableness.

As regards the question of monopoly, the situation is just as serious. Our lawyers and our courts and a vast number of our people have of late years been sadly confusing pre-eminence with monopoly. A concern may be pre-eminent in its line of trade without being monopolistic. For instance, Corporation A may have but a comparatively small percentage of the business in a given line of trade, and yet through patents, secretive methods and lack of publicity regarding its affairs, may actually exert a more dominating influence in its trade than Corporation B, which does a much larger business but has no patents and is open-handed as to its methods and practices full publicity as to its conduct. Although a concern may have a very large percentage of the business in a given line of manufacture, it surely cannot be accused of having a monopoly provided it has no patents and no control of raw material or any other advantage that cannot be immediately obtained by any one else in the business or who desires to enter the business. Again, a concern that has only a moderate percentage of, say, all the coal in the country, might easily, under certain forms of organization and directed by a certain kind of men, actually exercise all the powers and practice all the abuses that go with private monopoly.

A Practicable Plan.

Our people should not and will not stand for restraint of trade; they should not and will not stand for private monopoly; but what constitutes restraint of trade and what constitutes private monopoly cannot be written down specifically in any law in such a way as to be applicable to each and every business concern in each and every line of

trade. This cannot possibly be done through legislation, and the Supreme Court cannot possibly do it by interpretation. Here is where the rule of reason should be applied, and it is necessary to have it applied by some Federal body *before* a corporation is organized, and not by the Supreme Court after the corporation is organized and *after* years of litigation. It must be applied by a court, a board or a commission created by Federal authority and having very broad powers —powers that can be exercised along both permissive and prohibitive lines; powers that will permit the application of the rule of reason to what is restraint of trade and what is monopoly, what is destructive competition and what is constructive co-operation. It seems to me, therefore, that the only sane and common sense plan under which our government can operate, with freedom to business and with protection to the people, is the one which I have just outlined.

Even though the question of restraint of trade or monopoly were not involved in any way, some such plan should be adopted, for the following all-sufficient reason: When a group of men seek to do a large business they require more than their own capital; they require more capital than they can obtain locally from people whom they know and who know them. They therefore seek capital from investors throughout our country and throughout the world, people whom they do not know and never see, people who have to take everything on faith. This is also largely true of the labor they employ and the customers they serve. This being so, such men become in a very real sense public servants and business trustees. They occupy much the same position towards investors that bankers do. Investors in large industrial enterprises deposit their money with the managers of such enterprises for safe-keeping and interest returns, just as they do with banks. Banks are required to make complete public exhibits of their condition and they

are controlled by the Federal Government. This is done for the protection of the people for whose money they are custodians. Our large industrial units should be chartered and then regulated by the Federal Government in the same manner and for precisely the same reason.

As some of you may know, I have been advocating this plan for many years. I first publicly spoke for it and urged it in an address at Columbia College seven years ago last February. Every development from that day to this has, in my judgment, shown the futility of any other course.

Federal, Not State, Control Required.

To-day a company wishing to do a great interstate business gets its charter from some one of our States. If it does not like the Seven Sisters of New Jersey it goes to Delaware; if it does not like the laws of Delaware it goes somewhere else. Wherever it goes, after it gets its charter, the State pays little or no attention to how it does its business. No State is powerful enough or has jurisdiction broad enough to follow the ramifications of one of these great companies. Neither is its jurisdiction wide enough to be helpful to one of those great companies when the company wishes to go abroad and get concessions for business. A Federal Incorporation Law would be beneficial to our industrial companies not only through making it unnecessary for them to comply with forty-eight conflicting State laws, but in helping them in the development of foreign trade; and it would be helpful to our people because the Federal Government would possess authority broad enough to properly regulate and control the operations of such companies and require publicity so full and complete as in itself to be a guarantee against improper business practices.

There is one great good that has come out of the Sherman Law and that is the agitation it has caused,—the agitation on the question of what is moral or immoral in business.

This agitation has continued until a higher standard of business morals has unquestionably arisen in this country during the last ten years. Men of large business affairs have recognized their responsibility to the public, to their stockholders, to labor, to consumer. A few of these large concerns have even gone so far as to take the public fully into their confidence, publishing complete annual reports and transacting their business in the open and on the square. All this is very good as far as it goes, but we must not forget that it has been done voluntarily by a comparatively few men who have been far-sighted enough to believe that it was not only right but good business policy. This, however, is not as it should be. It should be done under Federal law and requirement. The people should not be asked to accept it as a favor from a few managers or a few corporations; they should know that they receive it from all managers and all corporations as their right,—a right provided for them and guaranteed to them by their Federal Government. Capitalizing companies without stock watering, publishing statements that mean full publicity and honorable conduct towards competitors and consumers should be required by law and regulation. The people know that they are entitled to all these things, and they believe that legal and administrative machinery should exist that would positively guarantee them. It should not be left to the mere whim or opinion of a certain set of directors or officers who happen to be temporarily in charge of the affairs of a large interstate corporation.

Business Consolidations Natural, Not Criminal.

The latest argument among our legal governmental friends is that the Sherman Law does not strike at pre-eminence if such pre-eminence is attained through natural growth; but that it does strike at pre-eminence obtained suddenly through consolidations.

These legal friends unfortunately are not business men. They have not been through the gruelling experience of the changing necessities of the business world, changes that affect business methods throughout the world and which must be met promptly if business is to succeed and people are to prosper. They depend almost wholly on their text-books, on precedents. Their look is naturally backward, while the business man's look must necessarily be forward.

Consolidations came about through natural causes. The so-called trusts have not made the times; the times have made the trusts. A revolution in business methods was wrought when the telephone, the telegraph, the wireless, and steam with all its appliances came into the hands of the business man. Things could then be done in a few moments that could not be done in a month in the past. New opportunities for great undertakings suddenly presented themselves. Business men had to take advantage of these opportunities at once if prosperity was to follow. Advantage had to be taken of them if success in international trade was to be ours. There was no time to be lost; precedents of all kinds had to be abandoned; there was not time to wait for a concern to grow naturally and slowly as it had in the past. Opportunities must be seized when they present themselves. It was the need of the hour, the need forced on American business men through new opportunities, that brought about the method of creating large companies by consolidation rather than by natural growth. This all-important fact seems to have been wholly overlooked by our legal friends. Again I say, the trusts have not made the times; the times have made the trusts.

The Consolidation Known as the United States.

The present Attorney General, Mr. Gregory, in his argument before the Supreme Court two or three weeks ago

argued that the International Harvester Company should be ordered dissolved by the Supreme Court solely because it was an organization formed out of several smaller organizations in a similar line of business, and that this is what the Sherman Law requires. How fortunate that the Sherman Law was not in existence when this country of ours was organized! How fortunate that Mr. Gregory was not the legal adviser of our people at that time, for had such been the case our thirteen original States could never have consolidated into the United States of America. Our country itself was formed through consolidation and has been fostered through absorption. If Mr. Gregory's contention and his interpretation of the Sherman Law are correct, our forefathers were all wrong. They should have allowed the State of Massachusetts to just grow naturally until it had acquired pre-eminence in the governmental affairs of this country; and if this were impossible or too slow a process then we should have had forty-eight separate governments in this country, all competing with one another.

Churches grow larger through consolidation; schools and universities grow larger through consolidation; all sorts of small stores have been consolidated into big department stores; telegraph, telephone and railroad companies have not grown naturally—they have grown through absorption and consolidation. In short, the enormous opportunities brought by the age of steam and electricity demanded large business units quicker than they could be produced through natural growth, and the only way to produce them was through consolidation. Banks of all kinds have grown larger through consolidation. The new currency bill permits National banks to do business outside the United States and our bankers are now making plans to take advantage of this permission. Branches are being opened up in South America; but are they being opened up by the First National Bank of Podunk, with a capital of $100,000? Cer-

tainly not; they are being opened up by the biggest banks in the United States, banks that have grown big through consolidation and reconsolidation.

The Government Itself Favors Adequate Size.

And mark this well: The present Administration, in its bill creating the Federal Reserve Board, specifically provides that a banking concern must have a capital and surplus of at least $1,000,000 before it may even file an application with the Federal Reserve Board to do business outside the United States. And mark this well too: The bill contains the following clause: "The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient." Another part of the bill provides that foreign business may be done "under such conditions and under such regulations as may be prescribed by said Board."

We, therefore, now have a condition in this country where large banks, with the approval of the Federal Reserve Board, may go abroad and establish branches, but they must do it under the Federal Board which has the power to regulate and control them; and it is specifically provided not only that they must have a large capital but that the amount of capital set aside for the conduct of the foreign business must be adequate for such business. Special emphasis is placed on the fact that, above all things, the capital must not be inadequate, for if, in the opinion of the Board, it is inadequate a foreign branch cannot be established,—thus clearly showing that the lawmakers were keenly alive to the necessity for a large capital in order to successfully conduct a foreign banking business.

How short-sighted and inconsistent for our politicians to take the position that this method of handling our banking

business is correct and then refuse to apply the same method to our business operations! They have given a Federal Reserve Board power to organize and regulate foreign branch banks, but will not, in the matter of business, adopt an equally constructive program; and yet it is infinitely more important that we find an outlet for our crops and manufactured products and find it on a large scale than that we find an outlet for our money on a large scale.

Consolidation in Business and Our Foreign Commerce.

The present Administration, of which Mr. Gregory is a part, gives the Federal Reserve Board the power to establish large banks abroad and the sole power to fix the minimum amount of capital that must be employed; and these banks are not required to grow naturally; they can acquire their size by consolidation. When some American business men got together and organized a company to go abroad and compete for the farm implement business of the world there was absolutely no law or Federal Board to guide them—no Federal body to which these men could go for counsel and permission as to the size of the company to be formed; and so the only thing these business men could do was to use their own judgment, go ahead and do the best they could. They went ahead and organized such a company, and in ten years developed a foreign business of over $50,000,000 a year.

During this time politicians were accusing the company of all sorts of heinous crimes. With the entire co-operation of the company the Bureau of Corporations began an investigation. This was begun during the Roosevelt Administration, but before it was finished during the Taft Administration the company was pounced upon by the Government and a suit was filed, charging the company with all sorts of immoral and improper conduct. The officers repeatedly asked the Government to point out wherein the

company was objectionable. They repeatedly visited Washington seeking light, and there was no light. The case dragged itself through the courts and all these charges were wholly disproved and thrown out; and now comes another Attorney General, of a different political party, who, while openly admitting that the company has done nothing wrong and that no one is complaining, prays for the destruction of the company solely on the ground that under the Sherman Law it was illegally organized.

Constructive Federal Legislation the Remedy.

I ask you gentlemen, with all the earnestness I possess, is it not high time that the sober common sense of not only the American business world but the entire American people was aroused on this subject? Is it any wonder that business men are bewildered? It is unthinkable, unbelievable that our people are demanding mere legal form rather than actual moral substance.

The present condition is intolerable, impossible. Is it not time that we stopped deceiving ourselves, stopped quibbling about legal technicalities, stopped resorting to makeshifts?

Why delay any longer? Why not admit that the object of the framers of the Sherman Law in striking at private monopoly and restraint of trade was commendable; that we want this principle recognized and maintained in our business life; but that we want a great deal more which the law as it stands does not and cannot give us. It must, therefore, be repealed, rewritten, or buttressed, not by such makeshifts as the Clayton "Muddle" Bill or the impotent Federal Trade Commission Act, but by a clearly defined piece of constructive legislation that will place the regulation and control of great interstate and international industrial concerns, and their right to exist, in the hands of our Federal Government.